

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HIDDEN HILLS MANAGEMENT, LLC,
and 334TH PLACE 2001, LLC

Plaintiffs,

v.

AMTAX HOLDINGS 114, LLC , and
AMTAX HOLDINGS 169, LLC

Defendants.

No. 3:17-cv-06048-RBL

AMTAX HOLDINGS 114, LLC AND
AMTAX HOLDINGS 169, LLC'S ANSWER
TO AMENDED AND SUPPLEMENTED
COMPLAINT AND VERIFIED
COUNTERCLAIMS

AMTAX HOLDINGS 114, LLC, AMTAX
HOLDINGS 169, LLC, and PARKWAY
APARTMENTS, LP

Counter-Plaintiffs,

v.

HIDDEN HILLS MANAGEMENT, LLC,
and 334TH PLACE 2001, LLC

Counter-Defendants.

Pursuant to Rules 8(b) and 81(c)(2) of the Federal Rules of Civil Procedure, Defendants
AMTAX Holdings 114, LLC ("AMTAX 114") and AMTAX Holdings 169, LLC ("AMTAX
169") hereby answer the allegations directed at each of them by Plaintiffs Hidden Hills

AMTAX 114 AND AMTAX 169'S
ANSWER AND COUNTERCLAIMS
No. 3:17-cv-06048-RBL – 1

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1 Management, LLC (“HHM”) and 334th Place 2001, LLC (“334th Place”) in the Amended and
 2 Supplemented Complaint (“Complaint”) filed on May 31, 2018 in this Court. As to allegations
 3 not alleged against a Defendant, no responsive pleading is required and those allegations should
 4 be considered denied as provided by Rule 8(b)(6) of the Federal Rules of Civil Procedure. By
 5 this pleading, AMTAX 114 and AMTAX 169 also assert verified counterclaims against HHM
 6 and 334th Place as set forth below.

7 **ANSWER TO COMPLAINT**

8 1. AMTAX 114 admits the allegations in the first sentence of Paragraph 1.
 9 Responding to the second sentence of Paragraph 1, AMTAX 114 states that the purpose of
 10 Hidden Hills 2001, a Washington Limited Partnership (the “Hidden Hills Partnership”), is
 11 described in Section 2.3 of the limited partnership agreement governing the Hidden Hills
 12 Partnership (the “Hidden Hills LPA”), and AMTAX 114 denies any characterization of the
 13 purpose of the Hidden Hills Partnership that is inconsistent with Section 2.3 of the Hidden Hills
 14 LPA.

15 2. Responding to Paragraph 2, AMTAX 114 admits that HHM is a Washington
 16 limited liability company with its principal place of business in Mercer Island, Washington, and
 17 that, prior to its removal on November 30, 2017, HHM was the Administrative General Partner
 18 of the Hidden Hills Partnership. Except as expressly admitted herein, AMTAX 114 denies each
 19 and every allegation contained in Paragraph 2.

20 3. Responding to Paragraph 3, AMTAX 114 admits that it is an Ohio limited
 21 liability company, and that it is the Hidden Hills Partnership’s Investor Limited Partner. Except
 22 as expressly admitted herein, AMTAX 114 denies each and every allegation contained in
 23 Paragraph 3.

24 4. AMTAX 114 denies the allegations in Paragraph 4, and states that the Hidden
 25 Hills Partnership’s current Special Limited Partner is non-party Tax Credit Holdings III, LLC.

26 5. AMTAX 114 admits the allegations in Paragraph 5.

1 6. AMTAX 169 admits the allegations in the first sentence of Paragraph 6.
2 Responding to the second sentence of Paragraph 6, AMTAX 169 states that the purpose of
3 Parkway Apartments, LP, a Washington Limited Partnership (the “Parkway Partnership”), is
4 described in Section 2.3 of the limited partnership agreement governing the Parkway Partnership
5 (the “Parkway LPA”), and AMTAX 169 denies any characterization of the purpose of the
6 Parkway Partnership that is inconsistent with Section 2.3 of the Parkway LPA.

7 7. Responding to Paragraph 7, AMTAX 169 admits that 334th Place is a
8 Washington limited liability company with its principal place of business in Mercer Island,
9 Washington, and that, prior to its removal on July 2, 2018, 334th Place was the Administrative
10 General Partner of the Parkway Partnership. Except as expressly admitted herein, AMTAX 169
11 denies each and every allegation contained in Paragraph 7.

12 8. Responding to Paragraph 8, AMTAX 169 admits that it is an Ohio limited
13 liability company, and that it is the Parkway Partnership’s Investor Limited Partner. Except as
14 expressly admitted herein, AMTAX 169 denies each and every allegation contained in Paragraph
15 8.

16 9. Responding to Paragraph 9, AMTAX 169 admits that the Parkway Partnership’s
17 current Special Limited Partner is non-party TCH II Pledge Pool, LLC.

18 10. AMTAX 169 admits the allegations in Paragraph 10.

19 11. Paragraph 11 contains legal conclusions and argument to which no response is
20 required. To the extent that Paragraph 11 contains factual allegations to which a response is
21 required, AMTAX 114 and AMTAX 169 admit such allegations.

22 12. Paragraph 12 contains legal conclusions and argument to which no response is
23 required. To the extent that Paragraph 12 contains factual allegations to which a response is
24 required, AMTAX 114 and AMTAX 169 admit such allegations.
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1 13. Paragraph 13 contains legal conclusions and argument to which no response is
2 required. To the extent that Paragraph 13 contains factual allegations to which a response is
3 required, AMTAX 114 and AMTAX 169 admit such allegations.

4 14. AMTAX 114 denies the allegations in the first sentence of Paragraph 14, and
5 further responds that, as explained in detail in AMTAX 114's counterclaims, HHM improperly
6 seeks by its Complaint to compel AMTAX 114 to sell its interest in the Hidden Hills Partnership
7 at a price that is substantially lower than the price HHM would have to pay if it properly
8 exercised its "Option" under Section 7.4.J of the Hidden Hills LPA. Responding to the second
9 sentence of Paragraph 14, AMTAX 114 states that Section 7.4.J of the Hidden Hills LPA speaks
10 for itself, and denies any characterization inconsistent with its terms.

11 15. Responding to the first and third sentences of Paragraph 15, AMTAX 114 states
12 that Section 7.4.J of the Hidden Hills LPA speaks for itself, and denies any characterization
13 inconsistent with its terms. AMTAX 114 admits the allegations in the second sentence of
14 Paragraph 15.

15 16. Responding to the first sentence of Paragraph 16, AMTAX 114 states that
16 Section 7.4.J of the Hidden Hills LPA speaks for itself, and denies any characterization
17 inconsistent with its terms. Responding to the second sentence of Paragraph 16, AMTAX 114
18 admits that it received a letter dated March 14, 2017 that purported to notify AMTAX 114 that
19 HHM was exercising its "Option" as provided in Section 7.4.J of the Hidden Hills LPA. Except
20 as expressly admitted herein, AMTAX 114 denies each and every allegation contained in
21 Paragraph 16.

22 17. Responding to Paragraph 17, AMTAX 114 states that Section 7.4.J of the Hidden
23 Hills LPA speaks for itself, and denies any characterization inconsistent with its terms.

24 18. Responding to the first sentence of Paragraph 18, AMTAX 114 states that Section
25 7.4.J of the Hidden Hills LPA speaks for itself, and denies any characterization inconsistent with
26 its terms. AMTAX 114 admits in response to the remainder of Paragraph 18 that the Hidden

Hills Apartment Complex is located in University Place, Washington, but otherwise lacks sufficient knowledge or information to form a belief concerning the truth of any factual allegations contained therein, and on that basis denies such allegations.

19. AMTAX 114 denies the allegations in the first sentence of Paragraph 19. AMTAX 114 lacks sufficient knowledge or information to form a belief concerning the truth of any factual allegations contained in the remainder of Paragraph 18, and on that basis denies such allegations.

20. AMTAX 114 denies the allegations in Paragraph 20.

21. AMTAX 114 admits the allegations in Paragraph 21.

22. Responding to Paragraph 22, AMTAX 114 admits that CBRE's report dated June 7, 2017 valued the Hidden Hills Apartment Complex at \$14,050,000, but lacks sufficient knowledge or information to form a belief concerning the basis for CBRE's valuation, which was more than seven million dollars lower than the valuation CBRE provided in a broker's opinion of value ("BOV") that HHM commissioned but subsequently hid from both AMTAX 114 and its own appraiser at CBRE. Except as expressly admitted herein, AMTAX 114 denies each and every allegation contained in Paragraph 22.

23. AMTAX 114 admits the allegations in Paragraph 23.

24. Responding to the first sentence of Paragraph 24, AMTAX 114 admits that HHM improperly attempted to influence what was supposed to be an independent appraisal process by distracting the appraisers with irrelevant information that purportedly related to environmental contamination, and by hiding material information, including a BOV that CBRE provided at HHM's request, which provided an opinion of the value of the Hidden Hills Apartment Complex that, at its midpoint, was \$7,250,000 million (52%) higher than the \$14,050,000 value reflected in the CBRE appraisal. Responding to the second sentence of Paragraph 24, AMTAX 114 admits that it objected to and attempted to prevent HHM's improper efforts to depress the appraised value of the property (and, by extension, the price HHM would have to pay to

1 purchase AMTAX 114's interest in the Hidden Hills Partnership). Except as expressly admitted
2 herein, AMTAX 114 denies each and every allegation contained in Paragraph 24.

3 25. AMTAX 114 denies the allegations in Paragraph 25.

4 26. AMTAX 114 denies the allegations in Paragraph 26.

5 27. Responding to Paragraph 27, AMTAX 114 admits that Cushman & Wakefield
6 issued an appraisal report on May 10, 2017 in which it concluded that the value of the Hidden
7 Hills Apartment Complex as of April 28, 2017 was \$19,700,000. Except as expressly admitted
8 herein, AMTAX 114 denies each and every allegation contained in Paragraph 27.

9 28. AMTAX 114 denies the allegations in Paragraph 28.

10 29. AMTAX 114 admits the allegations in the first sentence of Paragraph 29.
11 AMTAX 114 denies the allegations in the second sentence of Paragraph 29.

12 30. Responding to Paragraph 30, AMTAX 114 admits that HHM provided Colliers
13 International ("Colliers") with certain environmental information, including estimated
14 remediation costs, but denies that the information was accurate or material to a determination of
15 the fair market value of the Hidden Hills Apartment Complex. Except as expressly admitted
16 herein, AMTAX 114 denies each and every allegation contained in Paragraph 30.

17 31. Responding to Paragraph 31, AMTAX 114 admits that Colliers issued its
18 appraisal report on or about October 23, 2017. Except as expressly admitted herein, AMTAX
19 114 denies each and every allegation contained in Paragraph 31.

20 32. Responding to Paragraph 32, AMTAX 114 admits that the October 23, 2017
21 Colliers appraisal report valued the Hidden Hills Apartment Complex at \$13,500,000, and
22 purported in reaching that value conclusion to make an "extraordinary assumption" about
23 hypothetical environmental remediation costs totaling more than \$3.7 million. Except as
24 expressly admitted herein, AMTAX 114 denies each and every allegation contained in Paragraph
25 32.
26

1 33. Responding to Paragraph 33, AMTAX 114 states that Section 7.4.J of the Hidden
2 Hills LPA speaks for itself, and denies any characterization inconsistent with its terms.

3 34. AMTAX 114 denies the allegations in Paragraph 34.

4 35. Responding to Paragraph 35, AMTAX 114 admits that its counsel sent a letter to
5 HHM's counsel on November 3, 2017. AMTAX 114 states further that the November 3, 2017
6 letter speaks for itself, and denies any characterization inconsistent with its contents. Except as
7 expressly admitted herein, AMTAX 114 denies each and every allegation contained in Paragraph
8 35.

9 36. Responding to Paragraph 36, AMTAX 114 admits that HHM has falsely claimed
10 in this action that it is entitled to purchase AMTAX 114's interest in the Hidden Hills Partnership
11 for \$1,051,856, but otherwise lacks sufficient knowledge or information to form a belief
12 concerning the truth of any factual allegations contained therein, and on that basis denies such
13 allegations.

14 37. AMTAX 114 denies the allegations in Paragraph 37.

15 38. Responding to Paragraph 38, AMTAX 114 and AMTAX 169 state that the
16 Parkway LPA and the Hidden Hills LPA speak for themselves, and deny any characterization
17 inconsistent with their contents.

18 39. AMTAX 169 denies the allegations in the first sentence of Paragraph 39, and
19 further responds that, as explained in detail in AMTAX 169's counterclaims, 334th Place has
20 breached its obligations under the Parkway LPA by (a) failing to maximize Parkway Partnership
21 income; (b) paying itself and its affiliates unauthorized and/or excessive payments in excess of
22 \$1.5 million; and (c) permitting the disproportionately high growth of operating expenses at the
23 Parkway Apartments. Responding to the second sentence of Paragraph 39, AMTAX 169 states
24 that Section 7.4.J of the Parkway LPA speaks for itself, and denies any characterization
25 inconsistent with its terms.
26

1 40. Responding to the first and third sentences of Paragraph 40, AMTAX 169 states
2 that Section 7.4.J of the Parkway LPA speaks for itself, and denies any characterization
3 inconsistent with its terms. AMTAX 169 admits the allegations in the second sentence of
4 Paragraph 40.

5 41. Responding to the first sentence of Paragraph 41, AMTAX 169 states that Section
6 7.4.J of the Parkway LPA speaks for itself, and denies any characterization inconsistent with its
7 terms. Responding to the second sentence of Paragraph 41, AMTAX 169 admits that it received
8 a letter dated January 3, 2018 that purported to notify AMTAX 169 that 334th Place was
9 exercising its “Option” as provided in Section 7.4.J of the Parkway LPA. Except as expressly
10 admitted herein, AMTAX 169 denies each and every allegation contained in Paragraph 41.

11 42. Responding to Paragraph 42, AMTAX 169 states that Section 7.4.J of the
12 Parkway LPA speaks for itself, and denies any characterization inconsistent with its terms.

13 43. Responding to the first sentence of Paragraph 43, AMTAX 169 admits that it
14 received a letter dated January 3, 2018, and denies any characterization inconsistent with the
15 terms of that letter, which speaks for itself. Responding to the second sentence of Paragraph 43,
16 AMTAX 169 admits that it did not respond to the January 3, 2018 letter. Responding to the third
17 and fourth sentences of Paragraph 43, AMTAX 169 admits that it received a letter dated
18 February 15, 2018, and denies any characterization inconsistent with the terms of that letter,
19 which speaks for itself. Except as expressly admitted herein, AMTAX 169 denies each and
20 every allegation contained in Paragraph 43.

21 44. Responding to the first sentence of Paragraph 44, AMTAX 169 admits that it sent
22 a letter to Ms. Tamaro, in her capacity as managing member of 334th Place, dated March 6,
23 2018. Responding to the second and third sentences of Paragraph 44, AMTAX 169 states that its
24 March 6, 2018 letter speaks for itself, and denies any characterization inconsistent with its terms.
25 AMTAX 114 denies the allegations in the fourth sentence of Paragraph 44. Except as expressly
26 admitted herein, AMTAX 169 denies each and every allegation contained in Paragraph 44.

1 45. Responding to Paragraph 45, AMTAX 169 admits that it received a letter dated
 2 March 7, 2018 from 334th Place that enclosed an appraisal from CBRE, and denies any
 3 characterization inconsistent with the terms of that letter, which speaks for itself. Except as
 4 expressly admitted herein, AMTAX 169 denies each and every allegation contained in Paragraph
 5 45.

6 46. AMTAX 169 admits the allegations in the first sentence of Paragraph 46.
 7 Responding to the second and third sentences of Paragraph 46, AMTAX 169 admits that its May
 8 8, 2018 letter speaks for itself, and denies any characterization inconsistent with its terms.
 9 Except as expressly admitted herein, AMTAX 169 denies each and every allegation contained in
 10 Paragraph 46.

11 47. AMTAX 169 denies the allegations in Paragraph 47.

12 48. AMTAX 114 repeats and incorporates by reference each and every response set
 13 forth above.

14 49. Paragraph 49 contains legal conclusions and argument to which no response is
 15 required. To the extent that Paragraph 49 contains factual allegations to which a response is
 16 required, AMTAX 114 admits that a dispute has arisen regarding whether HHM has acted in
 17 accordance with the requirements of Section 7.4.J of the Hidden Hills LPA, and whether HHM
 18 has been removed as the Hidden Hills Partnership's General Partner pursuant to Section 4.5 of
 19 the Hidden Hills LPA.

20 50. Paragraph 50 is a characterization of HHM's claims and requested relief, to which
 21 no response is required.

22 51. Paragraph 51 contains legal conclusions and argument to which no response is
 23 required. To the extent that Paragraph 51 contains factual allegations to which a response is
 24 required, AMTAX 114 admits such allegations.

25 52. AMTAX 169 repeats and incorporates by reference each and every response set
 26 forth above.

53. Paragraph 53 contains legal conclusions and argument to which no response is required. To the extent that Paragraph 53 contains factual allegations to which a response is required, AMTAX 169 admits that a dispute has arisen regarding whether 334th Place has acted in accordance with the requirements of Section 7.4.J of the Parkway LPA, and whether 334th Place has been removed as the Parkway Partnership's General Partner pursuant to Section 4.5 of the Parkway LPA.

54. Paragraph 54 is a characterization of 334th Place's claims and requested relief, to which no response is required.

55. Paragraph 55 contains legal conclusions and argument to which no response is required. To the extent that Paragraph 55 contains factual allegations to which a response is required, AMTAX 169 admits such allegations.

56. No response is required to the remainder of the Complaint, which sets forth HHM and 334th Place's prayer for relief. To the extent the remainder of the Complaint contains factual allegations to which a response is required, AMTAX 114 and AMTAX 169 deny each and every such allegation.

DEFENSES

AMTAX 114 and AMTAX 169 plead the following separate and distinct defenses without conceding that they bear the burden of proof as to any of these issues. AMTAX 114 and AMTAX 169 reserve the right to assert additional defenses that discovery indicates are proper.

FIRST DEFENSE

(Failure to State a Claim)

1. The Complaint, and each cause of action alleged therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(Claim Barred by Contractual Terms)

2. The Complaint, and each cause of action alleged therein, is barred, released, waived, or otherwise precluded by the terms of the Hidden Hills LPA and the Parkway LPA alleged in the Complaint.

THIRD DEFENSE

(Estoppel)

3. The Complaint, and each cause of action alleged therein, is barred in whole or in part by the doctrine of estoppel.

FOURTH DEFENSE

(Unclean Hands)

4. The Complaint, and each cause of action alleged therein, is barred in whole or in part by the doctrine of unclean hands.

FIFTH DEFENSE

(Waiver)

5. The Complaint, and each cause of action alleged therein, is barred in whole or in part by the doctrine of waiver.

SIXTH DEFENSE

(Prior Breach)

6. The Complaint, and each cause of action alleged therein, is barred by reason of prior breaches of the Hidden Hills LPA and the Parkway LPA, upon which HHM and 334th Place base their Complaint.

WHEREFORE, having fully answered the allegations in the Complaint, AMTAX 114 and AMTAX 169 request that the Court enter an order dismissing the Complaint with prejudice and in its entirety, and awarding AMTAX 114 and AMTAX 169 all permissible costs and expenses, as well as such other relief the Court deems just and proper.

COUNTERCLAIMS

For its Counterclaims against Plaintiffs Hidden Hills Management, LLC (“HHM”) and 334th Place 2001, LLC (“334th Place”), AMTAX Holdings 114, LLC (“AMTAX 114”) and AMTAX Holdings 169, LLC (“AMTAX 169”) hereby state and allege the following:

INTRODUCTION

1. AMTAX 114 and AMTAX 169 bring these counterclaims to protect themselves against efforts by the principal of HHM and 334th Place, Catherine Tamaro, to exploit her control over two low-income housing tax credit (“LIHTC”) partnerships in order to enrich herself at the expense of the partnerships and their investor limited partners.

2. AMTAX 114 is the Investor Limited Partner of Hidden Hills 2001, L.P. (the “Hidden Hills Partnership”), a LIHTC limited partnership formed exclusively to develop, own, operate, and ultimately dispose of an affordable housing development in University Place, Washington (the “Hidden Hills Apartment Complex”). The Hidden Hills Partnership is governed by an Amended and Restated Agreement of Limited Partnership (the “Hidden Hills LPA”), which is attached hereto as Exhibit A. Until November 30, 2017, HHM was a General Partner of the Hidden Hills Partnership.

3. HHM initiated an action on November 14, 2017 that seeks to compel AMTAX 114 to sell its interest in the Hidden Hills Partnership at a price that is millions of dollars less than fair market value. As explained below, HHM’s lawsuit is the culmination of a scheme to improperly influence and, ultimately, to ignore the independent appraisal process that the Hidden Hills LPA required the parties to follow in calculating the price HHM must pay to buy AMTAX 114 out of the Hidden Hills Partnership.

4. HHM’s efforts to exploit longstanding environmental issues at the property to artificially depress the appraised value of the Hidden Hills Apartment Complex were undertaken specifically to enrich HHM at the expense of AMTAX 114 and the Hidden Hills Partnership, and

1 constituted material breaches of HHM's contractual and fiduciary duties as a General Partner of
2 the Hidden Hills Partnership.

3 5. On the basis of this and other misconduct, on November 30, 2017, AMTAX 114
4 exercised its right under Section 4.5(A)(iv)(2) of the Hidden Hills LPA to remove HHM as a
5 General Partner of the Hidden Hills Partnership and designate its affiliate, Saugatuck, LLC, as a
6 replacement General Partner. Although this notice is self-effectuating under the terms of the
7 Hidden Hills LPA, AMTAX 114 has not taken any non-judicial action to enforce its removal
8 rights, but instead seeks by these counterclaims, *inter alia*, to enforce those rights. Attached
9 hereto as Exhibit B is AMTAX 114's November 30, 2017 removal notice.

10 6. Even if HHM were entitled to exercise its Option under Section 7.4.J of the
11 Hidden Hills LPA—which it is not—HHM has a duty to indemnify AMTAX 114 for any loss
12 AMTAX 114 stands suffer by operation of Section 7.4.J of the Hidden Hills LPA as a result of
13 any reduction in appraised value based on environmental conditions.

14 7. AMTAX 169 is the Investor Limited Partner of Parkway Apartments, LP (the
15 "Parkway Partnership"), a LIHTC limited partnership formed exclusively to develop, own,
16 operate, and ultimately dispose of an affordable housing development in Federal Way,
17 Washington (the "Parkway Apartments"). The Parkway Partnership is governed by an Amended
18 and Restated Agreement of Limited Partnership (the "Parkway LPA"), which is attached hereto
19 as Exhibit C. Until July 2, 2018, 334th Place 2001, LLC ("334th Place") was a General Partner
20 of the Parkway Partnership.

21 8. As explained below, 334th Place has breached the Parkway LPA because:
22 (a) 334th Place has paid itself or its affiliates more than \$1.5 million in fees that were either
23 unauthorized or grossly exceeded the authorized fee amounts, violating the Parkway LPA and
24 334th Place's fiduciary duties; (b) the operating expenses of the Parkway Apartments have
25 substantially and inexplicably outpaced inflation; and (c) 334th Place has defaulted on its
26 obligation to maximize partnership income by increasing rental rates at the Parkway Apartments

1 to levels permitted under the LIHTC program. 334th Place's actions have resulted in substantial
 2 economic losses to the Parkway Partnership and to AMTAX 169 and thus constitute grounds for
 3 334th Place's removal from the Parkway Partnership.

4 9. On the basis of this and other misconduct, on July 2, 2018, AMTAX 169
 5 exercised its right under Section 4.5(A)(iv)(2) of the Parkway LPA to remove 334th Place as a
 6 General Partner of the Parkway Partnership and designate its affiliate, Saugatuck, LLC, as a
 7 replacement General Partner. Although this notice is self-effectuating under the terms of the
 8 Parkway LPA, AMTAX 169 has not taken any non-judicial action to enforce its removal rights,
 9 but instead seeks by these counterclaims, *inter alia*, to enforce those rights. Attached hereto as
 10 Exhibit D is AMTAX 169's July 2, 2018 removal notice.

11 10. In addition to direct claims, AMTAX 169 hereby asserts derivative counterclaims
 12 to recover damages suffered by the Parkway Partnership as a result of 334th Place's misconduct.
 13 AMTAX 169 may bring these claims derivatively on behalf of the Parkway Partnership because
 14 (a) AMTAX 169 was a partner in the Parkway Partnership at all times when 334th Place
 15 breached its obligations to the partnership; and (b) AMTAX 169's action against 334th Place is
 16 not a collusive one to confer jurisdiction that the Court would otherwise lack.

17 11. Demanding that 334th Place pursue claims on behalf of the Parkway Partnership
 18 would have been a futile and useless act, because the wrongdoing alleged herein was perpetrated
 19 by 334th Place itself, notwithstanding its duty to place the interests of Parkway Partnership
 20 ahead of its own.

21 PARTIES

22 12. Defendant and Counter-Plaintiff AMTAX 114, a limited liability company
 23 incorporated in Ohio, is the Hidden Hills Partnership's Investor Limited Partner. AMTAX 114's
 24 non-managing member is AMTAX Holdings Corporate Fund (DEL) IV, LLC ("AMTAX
 25 Fund"), a limited liability company incorporated in Delaware. The non-managing member of
 26

1 AMTAX Fund, in turn, is GMACCH Guaranteed TCF IV, LLC (“GMACCH IV”), a limited
2 liability company incorporated in Delaware.

3 13. Tax Credit Holdings III, LLC (“TCH III”), a limited liability company
4 incorporated in Delaware, is the Hidden Hills Partnership’s Special Limited Partner. TCH III, a
5 non-party to this lawsuit, is the non-member manager of AMTAX 114, the managing member of
6 AMTAX Fund, and the sole member of GMACCH IV. TCH III’s sole member is Alden Pacific
7 Holdings, LLC (“Alden Pacific”), a limited liability company incorporated in Delaware. Alden
8 Pacific’s sole member, in turn, is Alden Torch Financial LLC (“Alden Torch”), a limited liability
9 company incorporated in Delaware with its principal place of business in Denver, Colorado.
10 Alden Torch has four individual members, three of whom are domiciled in Colorado. The fourth
11 individual member of Alden Torch is domiciled in Massachusetts.

12 14. To the extent that AMTAX 114, AMTAX Fund, GMACCH IV, TCH III, or
13 Alden Pacific has a principal place of business, the principal place of business for each of these
14 entities is Denver, Colorado.

15 15. Plaintiff and Counter-Defendant HHM is a limited liability company incorporated
16 in the State of Washington with its principal place of business in Mercer Island, Washington. On
17 information and belief, any members of HHM are incorporated in the State of Washington and
18 maintain their principal places of business in the State of Washington. Based on a reasonable
19 review of publicly available information, neither HHM nor any of its members is a citizen of
20 Colorado, Delaware, Massachusetts, or Ohio.

21 16. Defendant and Counter-Plaintiff AMTAX 169, a limited liability company
22 incorporated in Ohio, is the Parkway Partnership’s Investor Limited Partner. AMTAX 169’s
23 sole member is GAHTCF Holdings, LLC (“GAHTCF”), a limited liability company
24 incorporated in Delaware. GAHTCF’s members, in turn, are GMACCH Guaranteed TCF IX,
25 LLC (“GMACCH IX”), a limited liability company incorporated in Delaware, and Omena, LLC
26 (“Omena”), a limited liability company incorporated in Nevada. GMACCH IX’s sole member is

1 Omena. Omena's sole member is Alden Pacific, which is incorporated in Delaware. Alden
2 Pacific's sole member, in turn, is Alden Torch, which is incorporated in Delaware and has its
3 principal place of business in Denver, Colorado. Alden Torch has four individual members,
4 three of whom are domiciled in Colorado. The fourth individual member of Alden Torch is
5 domiciled in Massachusetts.

6 17. TCH II Pledge Pool, LLC ("TCH II Pledge Pool") is the Parkway Partnership's
7 Special Limited Partner. TCH II Pledge Pool, a non-party to this lawsuit, is a limited liability
8 company incorporated in Delaware. TCH II Pledge Pool's sole member is Tax Credit Holdings
9 II, LLC ("TCH II"), a limited liability company incorporated in Delaware. TCH II's sole
10 member is Alden Pacific, which is incorporated in Delaware. As described above, Alden
11 Pacific's sole member, in turn, is Alden Torch, which is incorporated in Delaware and has its
12 principal place of business in Denver, Colorado. Alden Torch has four individual members,
13 three of whom are domiciled in Colorado. The fourth individual member of Alden Torch is
14 domiciled in Massachusetts.

15 18. To the extent that AMTAX 169, GAHTCF, GMACCH IX, Omena, Alden Pacific,
16 TCH II Pledge Pool, or TCH II has a principal place of business, the principal place of business
17 for each these entities is Denver, Colorado.

18 19. Plaintiff and Counter-Defendant 334th Place is a limited liability company
19 incorporated in the State of Washington with its principal place of business in Mercer Island,
20 Washington. On information and belief, any members of 334th Place are incorporated in the
21 State of Washington and maintain their principal places of business in the State of Washington.
22 Based on a reasonable review of publicly available information, neither 334th Place nor any of
23 its members is a citizen of Colorado, Delaware, Massachusetts, Nevada, or Ohio.

24 20. Counter-Plaintiff Parkway Apartments, LP (the "Parkway Partnership") is a
25 limited partnership incorporated in Washington. Prior to its removal on July 2, 2018, 334th
26 Place was the Parkway Partnership's Administrative General Partner. AMTAX 169 is the

1 Parkway Partnership's Investor Limited Partner. TCH II is the Parkway Partnership's Special
 2 Limited Partner.

3 JURISDICTION AND VENUE

4 21. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 and
 5 1367.

6 22. These counterclaims seek declaratory relief pursuant to Rule 57 of the Federal
 7 Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202, which grant this Court authority to
 8 declare the rights and other legal relations surrounding questions of actual controversy that exist
 9 between AMTAX 114 and HHM and between AMTAX 169 and 334th Place.

10 23. Venue is proper in the United States District Court for the Western District of
 11 Washington under 28 U.S.C. § 1391 because the Hidden Hills Apartment Complex and the
 12 Parkway Apartments are located in this District, and because the parties have agreed to venue
 13 and personal jurisdiction in this District.

14 FACTS

15 The LIHTC Program

16 24. Congress passed the LIHTC provisions in Section 42 of the Internal Revenue
 17 Code ("Section 42") in order to promote private investment in the development of affordable
 18 housing. Section 42 permits investors who commit capital to developing and operating
 19 affordable housing projects to earn tax credits generated by those projects, as well as tax
 20 deductions arising out of any depreciation of the investor's capital account and other benefits
 21 attendant to their ownership interests.

22 25. LIHTC investments are typically structured as a limited partnership between an
 23 investor limited partner, who provides the necessary capital, and a general partner, who is
 24 responsible for developing and operating the project (and earns substantial fees for doing so).

25 26. LIHTC partnership agreements, like the one at issue here, often contain
 26 provisions giving the various partners certain rights to affect a disposition of the partnership

1 following the end of the fifteen-year Compliance Period in which the tax credits are fully earned
 2 and retained. These provisions can include options to purchase, forced sale rights, and rights of
 3 first refusal.

4 27. Partnership agreements for LIHTC partnerships contain provisions designed to
 5 protect the limited partners' capital investment. These provisions expressly spell out that the
 6 general partner owes a fiduciary duty to protect the interests of the limited partners and confer on
 7 investor limited partners rights to remove general partners based on material breaches of
 8 contractual or fiduciary duties.

9 **The Hidden Hills Dispute**

10 ***The Hidden Hills Partnership***

11 28. The Hidden Hills Partnership is a Washington State LIHTC limited partnership
 12 created for the purpose of developing, owning, operating, and ultimately disposing of the Hidden
 13 Hills Apartment Complex. The Hidden Hills Partnership and the respective rights and
 14 obligations of its partners, including AMTAX 114 and HHM, are governed by the Hidden Hills
 15 LPA.

16 29. As Investor Limited Partner, AMTAX 114 made substantial capital contributions
 17 to the Hidden Hills Partnership in connection with the development and operation of the Hidden
 18 Hills Apartment Complex, and holds an ownership interest in the Hidden Hills Partnership that
 19 exceeds ninety-nine percent (99%).

20 30. Section 7.4.J of the Hidden Hills LPA grants the Hidden Hills Partnership's
 21 Managing General Partner an option during the twenty-four month period following the end of
 22 the Compliance Period to purchase the Interest of the Investor Limited Partner (the "Option").

23 31. Section 7.4.J further provides: "In the event the Managing General Partner
 24 exercises the Option, it must pay to the Investor Limited Partner the Option Price (as defined
 25 herein) in cash. The Option Price shall equal the greater of (i) the fair market value of the
 26 Interest, without offset for any lack of control or inability to control management of the Investor

Limited Partner, (Fair Market Value shall be determined by two independent MAI appraisers: one selected by the Managing General Partner and one by the Investor Limited Partner. If such appraisers are unable to agree on the value, they shall jointly appoint a third independent MAI appraiser whose determination shall be final and binding), or (ii) an amount determined by the Partnership Accountants, which is sufficient to pay (a) all outstanding indebtedness secured by the Apartment Complex and (b) distribute to the Investment Company cash proceeds sufficient to enable the Investment Company to pay, on an after tax basis, any taxes projected to be imposed on the Investment Company as a result of the sale pursuant to the Option.”

32. Section 6.2(B) of the Hidden Hills LPA provides the method for distributing proceeds from a sale of the Hidden Hills Apartment Complex.

33. Section 4.5(A)(iv)(2) of the Hidden Hills LPA permits AMTAX 114, as the Investor Limited Partner, to remove HHM as a General Partner based, *inter alia*, on material violations of the Hidden Hills LPA.

34. Sections 7.4.F and 7.4.G of the Hidden Hills LPA impose on HHM fiduciary duties to the Hidden Hills Partnership and to AMTAX 114 as Investor Limited Partner.

35. Upon the formation of the Hidden Hills Partnership, and in consideration for AMTAX 114’s admission and capital contributions to the Hidden Hills Partnership, HHM and AMTAX 114 entered into an Environmental Indemnity and ADA Compliance Agreement (“Environmental Indemnity Agreement”), which is attached hereto as Exhibit E.

36. Pursuant to the Environmental Indemnity Agreement, HHM agreed to serve as the Indemnitor and must indemnify AMTAX 114 and hold AMTAX 114 harmless “from and against any and all claims, costs, litigation, proceedings, investigations, loss, damage, liability, fine, penalty, assessment or expense, and/or loss, or deferment or delay of distributions from Hidden Hills to [AMTAX 114] (collectively referred to as ‘Environmental Liability’) arising from, or as a result of, or relating to, any Hazardous Substance, Hazardous Substance Activity or violation of Environmental Laws . . . , on the, or adversely affecting the, Property.”

HHM Fails to Observe the Independent Appraisal Process Set Forth in the Hidden Hills LPA

37. On March 14, 2017, Ms. Tamaro sent a letter to AMTAX 114 that purported to exercise HHM's Option to purchase AMTAX 114's interest in the Hidden Hills Partnership, thereby triggering the independent appraisal provisions of Section 7.4.J of the Hidden Hills LPA.

38. Ms. Tamaro acknowledged in her March 14, 2017 letter that it would be improper for either party to "instruct its appraiser as to a desired valuation." Contrary to that very principle, however, Ms. Tamaro insisted in the same letter that "[t]he cost of remediating the property's environmental liability must be included in the valuation."

39. AMTAX 114, through its agent Chris Blake, affirmatively objected to HHM's attempt to undermine the independence of the appraisal process by imposing conditions on the valuation, and expressed concern that HHM's actions were intended to depress the appraised value and thereby reduce the price that HHM would have to pay to purchase AMTAX 114's interest in the Hidden Hills Partnership.

40. AMTAX 114 nevertheless complied with its obligation under Section 7.4.J. of the Hidden Hills LPA and obtained an appraisal report from Cushman & Wakefield (the "C&W appraisal"), which assessed the value of the Hidden Hills Apartment Complex at \$19,700,000. Mr. Blake shared the C&W appraisal with Ms. Tamaro by email on May 11, 2017.

41. The C&W appraisal acknowledged that "the subject is located within the Tacoma Smelter Plume due to the airborne deposition of ash from the former Asarco smokestack in nearby Ruston," and that the appraiser had been provided with a "Phase I Environmental Site Assessment dated November 28, 2001 prepared by Surveys Inc. of Renton, WA." The C&W appraisal further stated that "[d]iscussions with brokers active in the Pierce County market indicate that sales of multifamily properties in the subject's general vicinity are not being adversely impacted by the Tacoma Smelter Plume."

42. The conclusions in the C&W appraisal regarding the value of the Hidden Hills Apartment Complex and the lack of any material adverse impact on pricing due to historical environmental contamination were borne out by a broker's opinion of value ("BOV") that HHM commissioned shortly after receiving the C&W appraisal from AMTAX 114. Indeed, the BOV that HHM commissioned arrived at a value for the Hidden Hills Apartment Complex that, at its midpoint, was \$600,000 *higher* than the appraised value reflected in the C&W appraisal.

43. Rather than simply accepting the C&W appraisal, however, HHM secretly hatched a three-part scheme to depress the fair market value of the Hidden Hills Apartment Complex in order to reduce the price it would have to pay AMTAX 114 for its interest in the Hidden Hills Partnership.

44. First, HHM hid the BOV that it had commissioned from its own appraiser, and improperly influenced the appraisal process by purporting to advise its appraiser that potential buyers would need to engage in environmental remediation in order to obtain financing.

45. On June 19, 2017, Ms. Tamaro sent a letter to Mr. Blake, enclosing an appraisal report obtained by HHM from CBRE (the "CBRE report"). Ms. Tamaro acknowledged in her letter that she was attempting to obtain new financing for the property, and that her ability to do so was contingent on environmental remediation that the Hidden Hills Partnership was not otherwise obligated to undertake.

46. The CBRE report assessed the value of the Property at \$14,050,000. The CBRE report noted that it had reduced the fair value determination based on the appraiser's claim that "it is likely that a potential buyer would require the site to be cleaned prior to sale."

47. Second, HHM solicited unnecessary environmental reports and irrelevant remediation cost estimates to help HHM achieve its objective of artificially depressing the fair market value of the Hidden Hills Apartment Complex. HHM, for example, unilaterally commissioned Environmental Partners, Inc., an environmental consulting company, to prepare a "Technical Memorandum," dated August 8, 2017, that purported to provide an estimate of

1 environmental remediation costs for the Hidden Hills Apartment Complex totaling \$3,760,450,
2 including “a 50 percent contingency of \$1,220,150 for unknown or changed conditions.”

3 48. By soliciting new reports and memoranda on historical environmental issues that
4 the Hidden Hills Partnership is under no obligation to address, HHM’s actions threaten to have a
5 material adverse impact on the value of the Hidden Hills Apartment Complex to the economic
6 detriment of both AMTAX 114 and the Hidden Hills Partnership.

7 49. Third, HHM secretly selected and communicated with a third appraiser while
8 falsely assuring AMTAX 114 that it was interested in AMTAX 114’s proposal that the Hidden
9 Hills Partnership list the Hidden Hills Apartment Complex for sale in order to let the market
10 determine its fair value. These actions not only confirm HHM’s ill intent, but were taken in
11 direct contravention of the procedure set forth in Section 7.4.J of the Hidden Hills LPA, which
12 requires the two previously selected appraisers—not HHM—to appoint the third appraiser.

13 50. On August 11, 2017, HHM’s counsel wrote a letter to AMTAX 114’s counsel
14 stating that Ms. Tamaro would seriously consider AMTAX 114’s request that the Hidden Hills
15 Partnership market the Property, and acknowledging that “disclosure and marketing will tell us”
16 the fair market value of the Hidden Hills Property.

17 51. Despite reassuring AMTAX 114’s counsel on multiple occasions that HHM
18 remained interested in marketing the Hidden Hills property in lieu of continuing with the
19 appraisal process, HHM’s counsel informed AMTAX 114’s counsel on September 22, 2017 that
20 Ms. Tamaro had taken steps to select a third appraiser without informing AMTAX 114.

21 52. Email correspondence subsequently forwarded to AMTAX 114 confirms that,
22 despite his assurances to the contrary to AMTAX 114’s counsel, HHM’s counsel was aware as
23 early as September 6, 2017 that Ms. Tamaro sought to return to the appraisal process. The email
24 correspondence also confirms that, contrary to the requirement in Section 7.4.J, it was Ms.
25 Tamaro, and *not* the party’s respective appraisers, who appointed the third appraiser.
26

53. On October 23, 2017, HHM transmitted a copy of a new appraisal report prepared by Colliers International Valuation and Advisory Services (the “Colliers report”), along with the August 8, 2017 “Technical Memorandum,” which is referred to and relied on in the Colliers report. The Technical Memorandum included a cost estimate of nearly \$3.8 million to perform environmental remediation, and the Colliers report deducted that entire amount—including “a 50 percent contingency of \$1,220,150” based solely on “unknown or changed conditions”—from its fair market value conclusion. The Colliers report claimed that this deduction was appropriate because, according to the appraiser, “[l]enders would only provide a loan for the subject if either the contamination was remediated by the owner before funding of a loan, or a plan is provided to remediate the site within the first year or two of the loan, or the owner would set up an escrow account and deposit money equivalent to the estimated remediation costs to cover the potential remediation of the contamination.”

54. On November 3, 2017, AMTAX 114’s counsel sent a letter to HHM’s counsel notifying HHM that AMTAX 114 formally objected to the use of the Colliers report in determining the fair market value of the Property for purposes of Section 7.4.J of the Hidden Hills LPA. AMTAX 114’s objection was based on HHM’s improper efforts to influence what is supposed to be an independent appraisal process for its own pecuniary benefit as described above, including but not limited to its secret and unilateral selection of the purported third appraiser in violation of Section 7.4.J of the Hidden Hills LPA.

55. HHM’s conduct was intended solely to suppress fair market value in order to reduce the price that HHM would need to pay to divest AMTAX 114 of its interest in the Hidden Hills Partnership. Indeed, HHM has not made any commitment to perform the environmental remediation reflected in the Technical Memorandum following its purchase of AMTAX 114’s interest, and a review of the website for the State of Washington’s Department of Ecology confirms that HHM has not even placed the Hidden Hills Property on the lengthy waiting list for

1 the Voluntary Cleanup Program under which the proposed remediation would supposedly be
2 undertaken.

3 ***HHM Initiates This Action and Is Removed as General Partner of the Hidden***
4 ***Hills Partnership Based on Breaches of the Hidden Hills LPA***

5 56. On November 14, 2017, HHM initiated this action, which sought to force
6 AMTAX 114 to sell its interest in the Hidden Hills Partnership for \$531,748.00, a price that is
7 millions of dollars less than what HHM would have to pay under the independent appraisal
8 process contemplated by Section 7.4.J of the Hidden Hills LPA. HHM has since conceded that
9 this amount is more than a half million dollars too low, and has recalculated its purported
10 purchase price to be \$1,051,856.

11 57. The Option price that HHM demands in its Complaint is incorrect because it is
12 based on the appraised value in the Colliers report that HHM improperly commissioned and
13 manipulated to its advantage.

14 58. The Option Price is also incorrect because HHM did not properly apply the
15 distribution formula set forth in Section 6.2(B) of the Hidden Hills LPA or take into account
16 HHM's independent obligation to indemnify AMTAX 114 for any losses arising from the
17 environmental condition of the Project.

18 59. On November 30, 2017, AMTAX 114 sent a letter notifying HHM that it was
19 exercising its right under Section 4.5(A)(iv)(2) of the Hidden Hills LPA to remove HHM as a
20 General Partner of the Hidden Hills Partnership based on material breaches by HHM of its
21 contractual and fiduciary duties that could "reasonably be expected to cause economic detriment
22 to the Partnership or to the Project" (the "Removal Notice"). AMTAX 114 explained in the
23 Removal Notice that HHM had violated Section 7.4.J of the Hidden Hills LPA by:
24 (a) improperly influencing what is supposed to be an independent appraisal process in an effort
25 to depress the appraised value of the Hidden Hills Apartment Complex and thereby reduce the
26 price HHM would have to pay to exercise its Option to purchase AMTAX 114's interest in the

1 Hidden Hills Partnership; and (b) secretly hiring a third appraiser in violation of the selection
 2 provisions of Section 7.4.J while falsely representing to AMTAX 114 that it remained interested
 3 in AMTAX 114's proposal to abandon the tainted appraisal process and instead determine fair
 4 market value the traditional way (i.e., by listing and marketing the property for sale). The
 5 Removal Notice further stated that HHM compounded its breach by initiating this lawsuit, in
 6 which HHM improperly seeks to force AMTAX 114 to sell its interest in the Hidden Hills
 7 Partnership at a price that is lower than the price to which AMTAX 114 is contractually entitled.
 8 The Removal Notice designated AMTAX 114's affiliate Saugatuck, LLC as the Hidden Hills
 9 Partnership's replacement General Partner.

10 ***AMTAX 114 Files Counterclaims Against HHM***

11 60. On December 14, 2017, AMTAX 114 removed this action to this Court.

12 61. On December 21, 2017, AMTAX 114 answered HHM's complaint and asserted
 13 counterclaims for breach of contract and breach of fiduciary duty, and for declaratory relief
 14 rejecting HHM's claim and enforcing AMTAX 114's removal rights under the LPA.

15 62. On April 30, 2018, AMTAX 114 amended its counterclaims to add a declaratory
 16 judgment claim seeking a determination that if the appraised value of the Hidden Hills
 17 Apartment Complex—and, by operation of Section 7.4.J, the price HHM must pay to purchase
 18 AMTAX 114's interest in the Partnership—is reduced to account for the environmental
 19 condition of the Property and/or any actual or projected environmental remediation costs, then
 20 HHM has a duty to indemnify AMTAX 114 for the loss that AMTAX 114 will suffer as a result
 21 of any such reduction in the appraised value of the Hidden Hills Apartment Complex.

22 ***The Parkway Dispute***

23 ***The Parkway Partnership***

24 63. The Parkway Partnership is a Washington State LIHTC limited partnership
 25 created for the purpose of developing, owning, operating, and ultimately disposing of the
 26

1 Parkway Apartments. The Parkway Partnership and the respective rights and obligations of its
 2 partners, including AMTAX 169 and 334th Place, are governed by the Parkway LPA.

3 64. As Investor Limited Partner, AMTAX 169 made substantial capital contributions
 4 to the Parkway Partnership in connection with the development and operation of the Parkway
 5 Apartments, and holds an ownership interest in the Parkway Partnership that exceeds ninety-nine
 6 percent (99%).

7 65. Section 4.5(A)(iv)(2) of the Parkway LPA permits AMTAX 169, as the Investor
 8 Limited Partner, to remove 334th Place as a General Partner based, *inter alia*, on material
 9 violations of the Parkway LPA.

10 66. Section 7.4.B of the Parkway LPA requires 334th Place, as the general partner, to
 11 “use reasonable efforts consistent with sound management practice to cause the Project to
 12 maximize income produced by the Project, including, if necessary, seeking any necessary
 13 approvals of, and implementing, appropriate adjustments in the rent schedule of the Property.”

14 67. Section 7.10.B of the Parkway LPA requires that “reimbursements to a General
 15 Partner or any of its Affiliates”—in other words, self-interested transactions—must be
 16 “necessary for the prudent formation, development, organization or operation of the Partnership”
 17 and “shall not exceed the amount the Partnership would be required to pay independent parties
 18 for comparable goods and services in the same geographic location.”

19 68. Article XI, Paragraph A of the Parkway LPA requires 334th Place, as General
 20 Partner, to obtain a Management Agent to manage the Parkway Apartments in accordance with
 21 the requirements of each lender and government agency with relevant jurisdiction. Article XI,
 22 Paragraph A further establishes that the Management Agent of the Parkway Apartments is
 23 entitled to receive a Management Fee, which is “not to exceed the lesser of 4% of net rental
 24 income or the maximum amount permitted by each Agency or Lender.”

25 69. Sections 7.4.F and 7.4.G of the Parkway LPA impose on 334th Place fiduciary
 26 duties to the Parkway Partnership and to AMTAX 169 as Investor Limited Partner. Specifically,

1 Section 7.4.F provides: “The General Partner shall have fiduciary responsibility for the
2 safekeeping and use of all funds and assets of the Partnership, whether or not in their immediate
3 possession or control. The General Partner shall not employ, or permit another to employ, such
4 funds or assets in any manner except for the exclusive benefit of the Partnership.”

5 70. Like the Hidden Hills LPA, Section 7.4.J of the Parkway LPA grants the Parkway
6 Partnership’s Managing General Partner an option during the twenty-four month period
7 following the end of the Compliance Period to purchase the Interest of the Investor Limited
8 Partner (the “Option”).

9 71. Section 7.4.J further provides: “In the event the Managing General Partner
10 exercises the Option, it must pay to the Investor Limited Partner the Option Price (as defined
11 herein) in cash. The Option Price shall equal the greater of (i) the fair market value of the
12 Interest, without offset for any lack of control or inability to control management of the Investor
13 Limited Partner, (Fair Market Value shall be determined by two independent MAI appraisers:
14 one selected by the Managing General Partner and one by the Investor Limited Partner. If such
15 appraisers are unable to agree on the value, they shall jointly appoint a third independent MAI
16 appraiser whose determination shall be final and binding), or (ii) an amount determined by the
17 Partnership Accountants, which is sufficient to pay (a) all outstanding indebtedness secured by
18 the Apartment Complex and (b) distribute to the Investment Company cash proceeds sufficient
19 to enable the Investment Company to pay, on an after tax basis, any taxes projected to be
20 imposed on the Investment Company as a result of the sale pursuant to the Option.”

21 ***334th Place Breaches its Obligations Under the Parkway LPA***

22 72. Starting in late 2017, AMTAX 169 began to uncover questionable activity by
23 334th Place in its capacity as General Partner of the Parkway Partnership.

24 73. To date, AMTAX 169 has identified a number of breaches by 334th Place of its
25 obligations under the Parkway LPA.
26

74. First, 334th Place has paid itself or its affiliates fees that were not authorized, and/or has grossly overpaid itself or its affiliates for fees that were authorized. For example, 334th Place:

- a) Paid Managing General Partner Fees totaling tens of thousands of dollars even though the Parkway Partnership did not generate sufficient cash flow to justify payment of those fees;
 - b) Paid itself Developer Fees totaling hundreds of thousands of dollars even though the Parkway Partnership did not generate sufficient cash flow to justify payment of those fees;
 - c) Paid Project Management Fees that collectively exceeded the 4% Net Rental Income cap set forth in the Parkway LPA by more than \$100,000;
 - d) Paid itself unauthorized “repair supervision fees” totaling hundreds of thousands of dollars;
 - e) Paid itself unauthorized “construction costs” totaling in excess of \$100,000;
 - f) Paid itself unauthorized “tenant file review fees” totaling tens of thousands of dollars;
 - g) Paid itself unauthorized “bookkeeping fees” totaling tens of thousands of dollars;
 - h) Failed to provide an equity contribution in 2012 to pay off interest that had accrued on its Deferred Development Fee (“DDF”), and instead improperly rolled those amounts into a larger generic General Partner receivable;
 - i) Charged the Parkway Partnership tens of thousands of dollars in rent to house employees in single family homes owned by 334th Place;
 - j) Paid tens of thousands of dollars to an affiliate for unauthorized legal services;
 - k) Paid thousands of dollars to an affiliate for unauthorized extermination services;
 - l) Paid thousands of dollars to an affiliate for unauthorized engineering survey fees;
- and

1 m) Paid itself and/or its affiliates tens of thousands of dollars for miscellaneous
2 unauthorized entity expenses.

3 75. These unauthorized and/or excessive payments that 334th Place made to itself and
4 its affiliates total more than \$1.5 million.

5 76. 334th Place's efforts to enrich itself at the expense of AMTAX 169 and the
6 Parkway Partnership violate 334th Place's contractual duties, including its duties regarding self-
7 interested transactions and its fiduciary duties to AMTAX 169 and the Parkway Partnership.

8 77. Second, 334th Place used Parkway Partnership funds on improperly classified
9 operating expenses, resulting in unjustified increases in controllable operating expenses such as
10 payroll, administrative costs, and maintenance costs. Indeed, the Parkway Apartments'
11 operating expenses have substantially and inexplicably outpaced inflation in recent years.
12 Operating expenses nearly *doubled* from 2014 to 2017, from \$4,800 per unit to \$8,700 per unit,
13 even though non-controllable costs (e.g., taxes, insurance, utilities) during the same period were
14 mostly flat, or even declined. 334th Place's unauthorized, unnecessary, and excessive spending
15 accordingly is to blame for this unprecedented increase in operating expenses.

16 78. Third, 334th Place is in default of its obligation to maximize partnership income
17 by increasing rental rates at the Parkway Apartments. Rental rates at the Parkway Apartments
18 were significantly below maximum allowable LIHTC rents in 2017, even before King County
19 increased those maximum rents in 2018. Given that King County is and has been one of the best
20 rental markets in the country, the Parkway Apartments could have and should have supported a
21 rent schedule in recent years that was closer to—if not at—maximum LIHTC rents.

22 79. Unreasonably high operating costs and unauthorized fees combined with
23 unnecessarily low rental rates have led to excessive Parkway Partnership losses. These losses, in
24 turn, have resulted in unnecessary advances to 334th Place to fund partnership operating deficits,
25 as well as an improper depletion of AMTAX 169's positive capital account, both of which serve
26

1 to divert Parkway Partnership income—including proceeds from an actual or hypothetical sale of
2 the Parkway Apartments—away from AMTAX 169 and into 334th Place’s pockets.

3 80. 334th Place’s actions have resulted in substantial economic losses to the Parkway
4 Partnership and to AMTAX 169, and thereby constitute grounds for 334th Place’s removal from
5 the Parkway Partnership.

6 ***AMTAX 169 Removes 334th Place as General Partner of the Parkway***

7 ***Partnership Based on Its Breaches of Contractual and Fiduciary Duties***

8 81. On January 3, 2018, 334th Place sent a letter purporting to exercise its option to
9 purchase AMTAX 169’s interest in the Parkway Partnership.

10 82. On March 6, 2018, AMTAX 169 sent a letter notifying 334th Place of its ongoing
11 investigation into questionable activity by 334th Place in its capacity as General Partner of
12 Parkway Partnership, including 334th Place’s failure to maximize rental income, the payment of
13 fees and distributions to 334th Place and/or its affiliates that were not permitted by or in excess
14 of the amounts permitted by the Parkway LPA, and the disproportionately high growth of
15 operating expenses at the Parkway Apartments. AMTAX 169 explained that it would address
16 334th Place’s purported exercise of its purchase option once AMTAX 169 had completed its
17 review of those issues.

18 83. On May 8, 2018, counsel for HHM and 334th Place emailed counsel for AMTAX
19 114 and AMTAX 169 requesting that AMTAX 114 stipulate to an amendment of HHM’s
20 original complaint to include allegations and claims regarding the Parkway Apartments, the
21 Parkway Partnership, the Parkway LPA, 334th Place, and AMTAX 169.

22 84. Counsel for AMTAX 114 and AMTAX 169 responded on May 8, 2018 and
23 attached a letter from AMTAX 169 to 334th Place that detailed the misconduct that AMTAX
24 169 had uncovered through its investigation of 334th Place’s questionable activity. The letter
25 explained that the “breadth, complexity, and opacity of General Partner’s misconduct have made
26 it difficult and time consuming to uncover.” The letter further stated that 334th Place could not

1 effectively invoke its purchase option until 334th Place cured the breaches of the Parkway LPA
2 described above. AMTAX 169 promised to refrain from removing 334th Place from the
3 Parkway Partnership to permit 334th Place an opportunity to cure these breaches.

4 85. Notwithstanding this letter, HHM filed its motion to amend and supplement its
5 complaint on the evening of May 8, 2018. On May 22, 2018, AMTAX's counsel sent a follow
6 up letter in which he noted that "AMTAX stands ready and willing to enforce its removal rights
7 if necessary to protect its interests, but also believes it would be far preferable if the
8 Partnership's partners first addressed their disputes to determine whether they can be resolved
9 without the need for further escalation." 334th Place, however, failed to cure or even respond to
10 any of material breaches detailed in AMTAX 169's May 8, 2018 letter.

11 86. On July 2, 2018, AMTAX 169 sent a letter notifying 334th Place that it was
12 exercising its right under Section 4.5(A)(iv)(2) of the Parkway LPA to remove 334th Place as a
13 General Partner of the Parkway Partnership based on material breaches by 334th Place of its
14 contractual and fiduciary duties that could "reasonably be expected to cause economic detriment
15 to the Partnership or to the Project" (the "Removal Notice"). The Removal Notice specifically
16 explained that 334th Place had breached the Parkway LPA by, among other things: (a) paying
17 itself or its affiliates more than \$1.5 million in fees that were either unauthorized or grossly
18 exceeded the authorized fee amounts; (b) spending partnership funds on improperly classified
19 operating expenses, resulting in unjustified increases in controllable operating expenses such as
20 payroll, administrative, and maintenance costs; and (c) defaulting on its obligation to maximize
21 partnership income by increasing rental rates at the Parkway Apartments to levels permitted
22 under the LIHTC program.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

(asserted by AMTAX 114 against HHM)

87. AMTAX 114 realleges and incorporates by reference each and every allegation set forth above.

88. AMTAX 114 and HHM are parties to the Hidden Hills LPA.

89. AMTAX 114 has substantially performed its obligations under the Hidden Hills LPA.

90. HHM breached the Hidden Hills LPA by, among other things:

(a) improperly influencing the independent appraisal process set forth in Section 7.4.J of the Hidden Hills LPA in an effort to depress the appraised value of the Hidden Hills Project and thereby reduce the price it would have to pay to purchase AMTAX 114's interest in the Hidden Hills Partnership;

(b) secretly hiring a third appraiser in violation of the selection provision of Section 7.4.J while falsely representing to AMTAX 114 that it remained interested in AMTAX 114's proposal to abandon the tainted appraisal process and instead determine fair market value by listing and marketing the Hidden Hills Apartment Complex for sale; and

(c) bringing a lawsuit that improperly seeks to compel AMTAX 114 to sell its interest in the Hidden Hills Partnership for a price that is millions of dollars lower than the price AMTAX 114 would be entitled to had HHM properly exercised its Option under Section 7.4.J.

91. As a direct and proximate result of HHM's conduct, AMTAX 114 has suffered damages and may suffer additional damages in the future. The exact amount of such damages is presently unknown, but is well in excess of \$1 million.

SECOND CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY

(asserted by AMTAX 114 against HHM)

92. AMTAX 114 realleges and incorporates by reference each and every allegation set forth above.

93. As a General Partner of the Hidden Hills Partnership, HHM owes fiduciary duties to the Hidden Hills Partnership and to AMTAX 114 as the Hidden Hills Partnership's Investor Limited Partner, including the duties of loyalty, care, good faith, and fair dealing.

94. HHM breached its fiduciary duties to AMTAX 114 and the Hidden Hills Partnership by subordinating the interests of the Hidden Hills Partnership and AMTAX 114 to its own interests, and by taking action on behalf of the Hidden Hills Partnership in order to derive an improper benefit for itself.

95. As a direct and proximate result of HHM's conduct, AMTAX 114 has suffered damages and may suffer additional damages in the future. The exact amount of such damages is presently unknown, but is well in excess of \$1 million.

THIRD CLAIM FOR RELIEF: DECLARATORY JUDGMENT - OPTION PRICE

(asserted by AMTAX 114 against HHM)

96. AMTAX 114 realleges and incorporates by reference each and every allegation set forth above.

97. HHM is a General Partner of the Hidden Hills Partnership.

98. AMTAX 114 is the Investor Limited Partner of the Hidden Hills Partnership.

99. A dispute has arisen between AMTAX 114 and HHM regarding the price HHM must pay to purchase AMTAX 114's interest in the Hidden Hills Partnership pursuant to Section 7.4.J of the Hidden Hills LPA.

100. AMTAX 114 is entitled to a determination that (1) HHM does not have a right to purchase AMTAX 114's interest in the Hidden Hills Partnership for \$1,051,856.00; (2) the appraisal process—including but not limited to HHM's secret selection of Colliers as the third

1 appraiser—was conducted in a manner that was inconsistent with the requirements of Section
 2 7.4.J of the Hidden Hills LPA; and (3) the Colliers report is not and cannot be considered the
 3 “final and binding” appraisal for purposes of calculating the Option price under Section 7.4.J.

4 **FOURTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT - REMOVAL**

5 **(asserted by AMTAX 114 against HHM)**

6 101. AMTAX 114 realleges and incorporates by reference each and every allegation
 7 set forth above.

8 102. HHM is a General Partner of the Hidden Hills Partnership.

9 103. AMTAX 114 is the Investor Limited Partner of the Hidden Hills Partnership.

10 104. A dispute has arisen between AMTAX 114 and HHM regarding AMTAX 114’s
 11 removal of HHM as a General Partner of the Hidden Hills Partnership in accordance with
 12 Section 4.5(a)(iv) of the Hidden Hills LPA.

13 105. AMTAX 114 is entitled to a determination that HHM has been removed as the
 14 Hidden Hills Partnership’s Administrative General Partner, and is obliged to cooperate fully with
 15 the transfer of Administrative General Partner responsibilities to AMTAX 114’s affiliate,
 16 Saugatuck, LLC.

17 **FIFTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT - DUTY TO INDEMNIFY**

18 **(asserted by AMTAX 114 against HHM)**

19 106. AMTAX 114 realleges and incorporates by reference each and every allegation
 20 set forth above.

21 107. The Environmental Indemnity Agreement requires HHM to indemnify AMTAX
 22 114 and hold AMTAX 114 harmless from and against environmental liabilities, which include
 23 any and all costs, loss, expense, and/or damage arising from, as a result of, or relating to any
 24 hazardous substance, hazardous substance activity, or violation of environmental laws.

25 108. A dispute has arisen between AMTAX 114 and HHM regarding the price HHM
 26 must pay to purchase AMTAX 114’s interest in the Hidden Hills Partnership pursuant to Section

7.4.J of the Hidden Hills LPA, and whether this price should be reduced to account for environmental remediation costs.

109. According to HHM, environmental remediation is necessary to address elevated concentrations of lead and arsenic in the soil beneath the Hidden Hills Apartment Complex.

110. The Environmental Indemnity Agreement defines “hazardous substances” to include arsenic and lead.

111. If the price that HHM must pay to purchase AMTAX 114’s interest in the Hidden Hills Partnership is reduced to account for the environmental condition of the Hidden Hills Apartment Complex and/or any actual or projected environmental remediation costs, AMTAX 114 is entitled to a determination that HHM must indemnify AMTAX 114 for the loss that AMTAX 114 suffers as a result of any such reduction in price, pursuant to the Environmental Indemnity Agreement.

SIXTH CLAIM FOR RELIEF: BREACH OF CONTRACT

**(asserted by AMTAX 169, directly and derivatively on behalf of
the Parkway Partnership, against 334th Place)**

112. AMTAX 169 realleges and incorporates by reference each and every allegation set forth above.

113. AMTAX 169 and 334th Place are parties to the Parkway LPA, which governs the Parkway Partnership.

114. Until its removal on July 2, 2018, 334th Place was a General Partner of the Parkway Partnership, and as such owed contractual and fiduciary duties to the Parkway Partnership and its Investor Limited Partner, AMTAX 169.

115. AMTAX 169 has substantially performed its obligations under the Parkway LPA.

116. 334th Place breached the Parkway LPA by, among other things:

(a) paying itself or its affiliates more than \$1.5 million in fees that were either unauthorized or grossly exceeded the authorized fee amounts;

(b) spending partnership funds on improperly classified operating expenses, resulting in unjustified increases in controllable operating expenses such as payroll, administrative, and maintenance costs; and

(c) defaulting on its obligation to maximize partnership income by increasing rental rates at the Parkway Apartments to levels permitted under the LIHTC program.

117. As a direct and proximate result of 334th Place's conduct, AMTAX 169 and the Parkway Partnership have suffered damages and may suffer additional damages in the future. The exact amount of such damages is presently unknown, but exceeds \$1.5 million.

SEVENTH CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY

**(asserted by AMTAX 169, directly and derivatively on behalf of
the Parkway Partnership, against 334th Place)**

118. AMTAX 169 realleges and incorporates by reference each and every allegation set forth above.

119. As a General Partner of the Parkway Partnership, 334th Place owed fiduciary duties to the Parkway Partnership and to AMTAX 169 as the Parkway Partnership's Investor Limited Partner, including the duties of loyalty, care, good faith, and fair dealing.

120. 334th Place breached its fiduciary duties to AMTAX 169 and the Parkway Partnership by subordinating the interests of the Parkway Partnership and AMTAX 169 to its own interests, and by taking action on behalf of the Parkway Partnership in order to derive an improper benefit for itself.

121. As a direct and proximate result of 334th Place's conduct, AMTAX 169 and the Parkway Partnership have suffered damages and may suffer additional damages in the future. The exact amount of such damages is presently unknown, but exceeds \$1.5 million.

EIGHTH CLAIM FOR RELIEF: CONVERSION

**(asserted by AMTAX 169 derivatively, on behalf of
the Parkway Partnership, against 334th Place)**

122. AMTAX 169 realleges and incorporates by reference each and every allegation set forth above.

123. 334th Place unjustifiably and willfully interfered with the Parkway Partnership's possession of funds to which the Parkway Partnership is entitled, to the detriment of the Parkway Partnership, and for 334th Place's own benefit, in violation of the Parkway Partnership's property rights.

124. As a direct and proximate result of 334th Place's actions, the Parkway Partnership suffered, and will continue to suffer, damages in an amount to be proven at trial but no less than the \$1.5 million.

NINTH CLAIM FOR RELIEF: UNJUST ENRICHMENT

**(asserted by AMTAX 169 derivatively, on behalf of
the Parkway Partnership, against 334th Place)**

125. AMTAX 169 realleges and incorporates by reference each and every allegation set forth above.

126. By paying itself unauthorized and excessive fees from partnership funds, 334th Place conferred a benefit on itself at the expense of the Parkway Partnership.

127. 334th Place had knowledge of and accepted this benefit.

128. Because the fees that 334th Place paid to itself were excessive and made without authorization, it would be inequitable for 334th Place to retain the benefit of the partnership funds that it improperly paid to itself.

129. As a direct and proximate result of 334th Place's unjust enrichment, the Parkway Partnership is entitled to restitution in an amount to be proven at trial but no less than \$1.5 million.

TENTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT - REMOVAL

(asserted by AMTAX 169 against 334th Place)

130. AMTAX 169 realleges and incorporates by reference each and every allegation set forth above.

131. Until its removal on July 2, 2018, 334th Place was a General Partner of the Parkway Partnership.

132. AMTAX 169 is the Investor Limited Partner of the Parkway Partnership.

133. A dispute has arisen between AMTAX 169 and 334th Place regarding AMTAX 169's removal of 334th Place as a General Partner of the Parkway Partnership in accordance with Section 4.5(A)(iv) of the Parkway LPA.

134. AMTAX 169 is entitled to a determination that 334th Place has been removed as the Parkway Partnership's Administrative General Partner, and is obliged to cooperate fully with the transfer of Administrative General Partner responsibilities to AMTAX 169's affiliate, Saugatuck, LLC.

ELEVENTH CLAIM FOR RELIEF:

DECLARATORY JUDGMENT - OPTION

(asserted by AMTAX 169 against 334th Place)

135. AMTAX 169 realleges and incorporates by reference each and every allegation set forth above.

136. Until its removal on July 2, 2018, 334th Place was a General Partner of the Parkway Partnership.

137. AMTAX 169 is the Investor Limited Partner of the Parkway Partnership.

138. A dispute has arisen between AMTAX 169 and 334th Place regarding whether 334th Place is entitled to exercise its option to purchase AMTAX 169's interest in the Parkway Partnership under Section 7.4.J of the Parkway LPA.

140. In the alternative, AMTAX 169 is entitled to a determination that 334th Place cannot exercise its option to purchase AMTAX 169's interest in the Parkway Partnership until 334th Place has cured its breaches of the Parkway LPA as alleged herein.

PRAAYER FOR RELIEF

WHEREFORE, AMTAX 114 and AMTAX 169 respectfully request:

1. A declaratory judgment that (1) HHM does not have a right to purchase AMTAX 114's interest in the Hidden Hills Partnership for \$1,051,856; (2) the appraisal process—including but not limited to HHM's secret selection of Colliers as the third appraiser—was conducted in a manner that was inconsistent with the requirements of Section 7.4.J of the Hidden Hills LPA; and (3) the Colliers report is not and cannot be considered the “final and binding” appraisal for purposes of calculating HHM's Option price under Section 7.4.J;

2. A declaratory judgment that HHM has been removed as a General Partner of the Hidden Hills Partnership pursuant to AMTAX 114's rights under 4.5(A)(iv) of the Hidden Hills LPA;

3. A declaratory judgment that, if the price that HHM must pay to purchase AMTAX 114's interest in the Hidden Hills Partnership is reduced to account for the environmental condition of the Hidden Hills Property and/or any actual or projected environmental remediation costs, HHM must indemnify AMTAX 114 for any loss that AMTAX 114 suffers from such a reduction in price;

4. A declaratory judgment that 334th Place has been removed as a General Partner of the Parkway Partnership pursuant to AMTAX 169's rights under 4.5(A)(iv) of the Parkway LPA;

5. A declaratory judgment that 334th Place is not entitled to purchase AMTAX 169's interest in the Parkway Partnership pursuant to Section 7.4.J of the Parkway LPA because 334th Place has been removed as the Parkway Partnership's Administrative General Partner, or, in the alternative, a declaratory judgment that 334th Place is not entitled to purchase AMTAX 169's interest in the Parkway Partnership pursuant to Section 7.4.J of the Parkway LPA until 334th Place has cured the breaches of the Parkway LPA alleged herein;

6. Damages in accordance with proof;

7. Interest on the amounts awarded at the legal rate;

8. Costs of the suit herein; and

9. Such other relief as the Court deems just and proper.

DATED: July 2, 2018

By: /s/ David J. Burman

/s/ Steven D. Merriman

David J. Burman, WSBA #10611

Steven D. Merriman, WSBA #44035

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By: /s/ Christopher G. Caldwell

/s/ Eric S. Pettit

Christopher G. Caldwell (admitted *pro hac vice*)

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Attorneys for Defendants and Counter-Plaintiffs
AMTAX Holdings 114, LLC, and AMTAX
Holdings 169, LLC

VERIFICATION

I, Chris Blake, on behalf of AMTAX 114 and AMTAX 169, hereby verify that I have authorized the filing of the attached Answer and Verified Counterclaims, that I have reviewed the Answer and Verified Counterclaims, and that the facts therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the forgoing is true and correct.

DATE: July 2, 2018



Chris Blake, Director, Capital Transactions,
Alden Torch Financial

CERTIFICATE OF SERVICE

On July 2, 2018, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

David R. Goodnight Rita V. Latsinova J. Scott Pritchard Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101 Phone: (206) 624-0900 Facsimile: (206) 386-7500 Email: david.goodnight@stoel.com Email: rita.latsinova@stoel.com Email: scott.pritchard@stoel.com	<input checked="" type="checkbox"/> Via the Clerk's eFiling Application <input type="checkbox"/> Via hand delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington, on July 2, 2018.

/s/ Steven D. Merriman
Steven D. Merriman